THE MODE OF ALTERING

THE

Constitution of Rhode Island,

AND A

REPLY TO PAPERS

BY

HONORABLE CHARLES S. BRADLEY,

AND

HONORABLE ABRAHAM PAYNE.

BY

W. P. SHEFFIELD.

NEWPORT, R. I.:
DAVIS & PITMAN, PRINTERS.
1887.

W. H. LOWDERMILK & CO.,
Standard, Choice and Rare Law and
Miscellaneous Books,
Government Publications.
Washington, D. C.

UNIVERSITY
OF PITTSBURGH

LIBRARIES

Dar. Acm.
JK3229
A5S542

THE MODE OF ALTERING

THE

Constitution of Rhode Island,

AND A

REPLY TO PAPERS,

BY

HONORABLE CHARLES S. BRADLEY,

AND

HONORABLE ABRAHAM PAYNE.

BY

W. P. SHEFFIELD.

NEWPORT, R. I.:
DAVIS & PITMAN, PRINTERS.
1887.

INTRODUCTION.

Much of the following paper has already been published in the *Providence Journal.*

The author was a member of the Landholders' Convention which was the precursor of the convention which framed the existing Constitution, and also a member of the latter convention. He has been a member of the General Assembly for a considerable time since the adoption of the present Constitution and a member of the bar since 1844, and has thus been interested in the administration of the Constitution, the provisions of which he approves, is the excuse he offers for writing the following paper.

If the Constitution has faults, it is possible that he may have become so accustomed to them as not to appreciate their existence. He has heard no complaints of hardship arising from defects in the Constitution from the men who carry on the great industrial businesses of the State, or, from those persons who defray the expenses of the government, and support the charities of the State, or from any other source but such as he believes to have been instigated by motives other than the public welfare. If, however, the people of the State, or a considerable portion of them, want a constitutional convention to revise or otherwise amend the existing Constitution, let the convention be called, and after its action is completed, and that action receives the approval of two successive general assemblies let it be submitted to the people, and if it there receives the constitutional majority it will become a part of the fundamental law of the State.

W. P. SHEFFIELD,

NEWPORT, Dec. 23, 1886.

The Constitution: Its Alteration and Amendment.

I.

THE ORIGIN OF GOVERNMENT IN RHODE ISLAND.

The British Constitution is made up of limitations upon the power of the Sovereign. From this Constitution our Puritan ancestors derived their ideas of a fundamental law.

Rhode Island had its origin in four distinct settlements—at Providence, Newport, Portsmouth and Warwick. Each of these settlements assumed corporate powers. Each purchased from the native Indians and took title to a tract of land. These lands were parcelled out in severalty from time to time to the proprietors, or were sold by the proprietary to new comers. The purchasers were heads of families, and the original proprietors assumed control of their lands in the first instance, and sold to, and permitted such other persons to come and live with them, and to occupy their lands as they thought proper, and the proprietary thus determined, who should, and who should not be inhabitants of their settlement. They owned the territory they had purchased and they assumed the right to say who should live upon it, and to adopt regulations for the government of themselves and of those who came to reside with them.

The Charter of 1643, not fully accepted by these settlements until 1647, confirmed and legalized the acts of, and consolidated the four private corporations into a public body, upon whom was conferred the powers of government; and the persons who had been admitted to the freedom of the private corporations were now made free of the public body, and had the power to admit others to the freedom of it.

The Charter of 1663 confirmed the previous purchases of the ter-

ritory and rights of government asserted by the proprietors, and re-incorporated the persons named in the Charter and those associated with them for the purposes of government, and authorized them at pleasure to admit new freemen to their body.

The Charter of 1663 was accepted by the Colony and became its fundamental law, and remained such up to the adoption and putting in operation of the existing Constitution in the spring of 1843.

According to the principles of the common law it may be said that any power of government not granted by the Charter of 1663, was reserved to the Crown.

The effect of the Revolution was to absolve the people from their allegiance to the Crown, and all of the limitations imposed in the Charter in favor of the Crown lapsed, and were vested in the General Assembly, or in the people, to be administered under the then existing government.

The first essay at amending the State Constitution (the Charter) was in March, 1787. At that time John Collins was Governor and Jonathan J. Hazard was the leader of the gubernatorial party in the State. It was a time of high party excitement and the issues were clearly defined. The Collins-Hazard party were what was then known as "the paper money party." They favored the making of a greatly depreciated currency a legal tender, an act which at the September term of the Court, 1786, had been declared to be unconstitutional. They opposed a convention to frame a federal constitution, and claimed that the State governments were made up of a confederation of towns, as the then National Government was made up of a confederation of states. Providence, Warwick and Portsmouth then had each four members in the General Assembly, and Newport had six representatives. These original towns had incorporated the other towns, giving them two representatives each. The Administration favored the reduction of the representatives of the four origi-

nal towns to two representatives each, and at this session of the General Assembly they ordered the act introduced into the Assembly which they submitted to the several towns to be voted upon by the freemen at the April election, by way of giving instruction to their deputies in the General Assembly for or against a constitution. The freemen of Providence under this act appointed David Howell, Nicholas Brown, Jabez Bowen and Paul Allen to prepare instructions to their deputies. The instructions reported were adopted by the town, and published in Peter Edos's *Herald*, and could be read with profit, if not with pleasure, by some of our modern constitution mongers. This ended that amendment.

Magna Charta and the English Bill of Rights, the Bible of the British Constitution, was a part of "the law of the land," as well after the Revolution as before, and so the Court undoubtedly thought in the decision of Trevett vs. Weeden.

Various attempts to frame a new constitution were made in the State before A. D., 1842, but as they all resulted in failure, they need not be enumerated.

It cannot be presumed that a state adopting a constitution which contained no provision in reference to its amendment was intended by its framers to be in all its parts of perpetual obligation, and that no possible exigency could arise in which it would not require amendment. In such a case the right to amend the constitution would pass under the constitution by necessary implication, but there can be no implication in the presence of an express grant of the power to amend a constitution, is my contention. It probably will not be denied that the Charter of 1663 before the Revolution might have been abrogated or amended by the concurrent act of the British Crown, who granted, and the people, or those who held the power of the people who accepted it. This proposition granted, and being taken in connection with the fact that the power of the Crown

lapsed at the Revolution, and as the power reserved to the Crown was a restriction upon the law-making power, at the Revolution this power lapsed and the restriction was removed, it would therefore appear that the action of the General Assembly and the people in abrogating the Charter and adopting the Constitution in 1842-3 was fully authorized.

The discussion of the methods of altering or amending the existing Constitution of Rhode Island, by ex-Chief Justice Bradley and Mr. Payne, though involved with a considerable extraneous matter, it seems to me may be resolved under two questions.

I. Can the people bind themselves and their successors by a constitution?

II. Have the people of Rhode Island, in their Constitution, limited themselves to a particular method of altering their Constitution?

These questions I propose to consider.

II.

CAN THE PEOPLE OF A STATE BIND THEMSELVES AND THEIR SUCCESSORS BY A CONSTITUTION.

The stating of this question in the presence of the history of the United States appears to forcibly suggest the answer. A constitution of a state, perhaps, may be said to be that instrument which provides for the institution of government, for the appointment of its agencies; and limits the authority of its agents.

Abraham Lincoln said in his inaugural message, "that perpetuity is implied in the fundamental law of all national governments." No distinction in this respect can be maintained between the National and the State Governments, for both are alike instituted by and for the people.

Washington in his farewell address said: "If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation, for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed."

Daniel Webster said: "I have said that it is one principle of the American system that the people limit their governments, national and state. They do so, but it is another principle, equally true and certain, and according to my judgment of things, equally important that *the people often limit themselves*. They set bounds to their own power. They have chosen to secure the institutions which they establish against hasty changes by simple majorities."—6 Webster's Works, p. 224.

Again Mr. Webster, referring to the abdication of King James, when King William assumed the throne, and the Peers, a permanent body, called a convention, to be chosen by the electors then qualified to vote for members of Parliament, says, this was a case of necessity, and significantly adds "a revolution. Don't we call it so?" James Madison, in a letter to Mr. Jefferson under date of February 4th, 1790, says: "On what principle is it that the voice of the majority binds the minority? It does not result, I conceive, from a law of nature, but from a compact founded on utility. A greater proportion might be required by the fundamental constitution of society, if under any particular circumstances it were judged eligible. Prior, therefore, to the establishment of this principle, unanimity was necessary, and rigid theory accordingly presupposes the assent of every individual to the rule which subjects the minority to the will of the majority.

Mr. Curtis in his History of the Constitution of the United States, v. 2, page 474, says: "*The existence and operation of a prescribed method of changing particular features of a government, mark the line between amendment and revolution* and render a resort to the latter, for the purpose of melioration or reform save in extreme cases of oppression unnecessary. According to our American theory of government, revolution and amendment both rest upon the doctrine, that the people are the source of political power, and each of them is the exercise of an ultimate right. But this right is exercised in the process of amendment in a prescribed form which preserves the continuity of the existing government, and changes only such of its fundamental rules as require revision without the destruction of any public or private rights that may have become vested under the former rule. Revolution, on the contrary, proceeds without form, is the violent disruption of the obligations resting on the authority of the former government, and terminates its existence often without saving any of the rights which may have grown up under it."

* * * "Without an ascertained and limited proceeding (in amending the Constitution) all change becomes in effect revolutionary, and this was accordingly in substance the same as the question whether revolution should be the only method by which the American people could even modify their system of government, when in the progress of time changes might become indispensable."

Judge Cooley, the author of "Constitutional Limitations," has said that he has no doubt that the people may bind themselves by a constitution.

The same author has also said that "the people," in the sense of this term as used in constitutions, as being the source of authority, is the body of electors created under the constitution, and even they can amend a constitution only by legitimate modes, which must either be prescribed in the constitution, or, *in the absence of a prescribed mode*, by authority of the law-making power. See Cooley on Constitutional Limitations, page 30.

In a publication issued by this learned author in 1885, he again recurs to this subject and lays down what he regards to be the correct doctrine as to the method of changing a constitution. "The written instrument comes into existence with the understanding and purpose that its several paragraphs and provisions shall mean forever exactly what they mean when adopted; and if a change is to take place in the constitution, it must be brought about by the steps which in the instrument itself are provided for." History of Michigan, page 345.

The Supreme Court of Iowa in Keohler & Lang vs. Hill, 60 Iowa page 551, says, "It matters not if not only every elector, but every adult person in the State should desire and vote for an amendment to the Constitution it cannot be recognized as valid unless such vote was held in pursuance of, and in substantial accord with the requirements of the Constitution."

Upon the inauguration of the government under the existing Con-

stitution Professor Goddard said: "We have contended that when the people have adopted a constitution which contains a provision for its own amendment, such constitution must be amended or changed according to the mode established by itself. We have moreover maintained that when a constitution provides no mode of amending itself the people must effect the desired reform through the agency of the Legislature, the representatives and agents of the people. No other mode of changing the government can be rescued from the reproach of being revolutionary in its character." * * * * "The doctrine that the people after having once embodied their will in a constitution, or in a fundamental law may alter or abolish such constitution or such fundamental law, without law and against law would in its practical application be fatal to popular liberty."

I have quoted these authorities to show that a people can bind themselves by a constitution, and that this obligation can not be cancelled or modified but as is provided in the constitution when the constitution makes a provision for its own amendment. True, the authorities quoted in some instances support more of the general views I uphold than is involved in the answer to the particular question now under consideration.

It has been said that government is a compact between the whole people and each individual; and between each individual and the whole people, and I will add whereby the whole people agree to protect the rights of the individual, and the individual agrees to give to the government of the whole people the measures of support which they may require within the limits of the constitution. And that every individual who remains or comes under the operation of a constitution is conclusively presumed to have assented to the terms of this compact. This being the case, I may say that neither party to this governmental compact is at liberty to break the contract without the assent of the other.

III.

HAVE THE PEOPLE OF RHODE ISLAND LIMITED THEMSELVES TO A PARTICULAR MODE OF AMENDING THEIR CONSTITUTION?

My adversaries do not state the ground upon which they deny that the people of Rhode Island have bound themselves to a particular method of altering the Constitution in a way that I feel perfectly sure that I comprehend their exact meaning. But as I understand their arguments they assume that the sovereign power was, and is, in the people, and that the people have no power to limit themselves in the exercise of their sovereignty; or, if they had such power that they have not limited themselves in its exercise in altering or amending the Constitution of Rhode Island. They assert that the latter view is strengthened by section 1, Article 1, and is confirmed by section 10, Article 4, of the Constitution. That the expressed method provided by Article 13, for amending the Constitution is merely cumulative upon the power impliedly reserved to the people. I conclude that when the human race was in a state of barbarism the people were sovereign, but when, and as they entered civil society, they surrendered certain of their sovereign powers that they might secure protection for the rights retained:—That the absolute sovereignty of the people can only exist in a state of barbarism and is not an incident of civil life, for when a person is subject to law he ceases to be a sovereign.

Article 13 provides with clearness of expression how the Constitution may be amended.

Judge Cooley says that "when the constitution defines the circumstances under which a right may be exercised * * * the specification is an implied prohibition against legislative interference to add to the condition."

Another rule, says the same learned author, is that "when the means for the exercise of a granted power are given no other or different means can be implied as being more effective or convenient."

Now Article 13 defines the circumstances under which the Constitution may be amended, to wit, when the proposed amendment shall be voted for by the constitutional majority of the members elected to the General Assembly, and shall be continued and certain proceedings had, and shall be again voted for by a like majority of the members, etc., and shall then be submitted to the people. The Article then defines the means by which an amendment may be adopted. In Potter's Dwarris on Statutes and Constitutions, page 64, it is said: "Affirmative propositions and the general arrangements of the Constitution are far more fruitful restraints upon the Legislature. Every positive direction contains an implication against everything contrary to it or which would frustrate or disappoint the purpose of that provision."

Article 13 prescribes an affirmative mode of amending the Constitution. It embraces a positive direction how the Constitution may be amended, and according to this authority contains an implication that no method shall be resorted to, to amend the Constitution contrary to it. I propose to give further consideration to this point.

An article in the *Providence Journal* by Mr. Abraham Payne, under date of November 1, 1885, contains the following paragraph, to wit: "In the case under consideration (the Dorr Constitution) the request was issued by a mass meeting; if the people chose to comply with the request to send delegates to the convention and to accept the recommendation of their delegates and adopt the constitution framed by them, it is difficult to see why their act would not be valid, as if the request had been issued by the General Assembly."

If Judge Bradley and Mr. Payne, who appear to be acting in concert in discussing this subject, intend to abandon the grounds of

their former contention, and to rely alone upon this newly stated proposition, the argument is much simplified. If on the other hand this newly stated proposition is to be regarded as an additional reason why the people have not bound themselves as to the method of altering their constitution, it only adds another point to be considered.

I admire the frankness of Mr. Payne in the statement of the basis of his contention; he takes us over no winding way, where we become confused by the pitfalls and signboards on its border, or where one gets lost in a labyrinth of by-ways and cross-ways, but boldly takes us up the brink of the precipice and bids us leap over the gulf. We admire a Sampson who shoulders the gates of Gaza and bears them off, while we withhold our approval of the cowardly loiterers who seek to undermine their supports with a penknife.

The logical sequence of Mr. Payne's position appears to tolerate the conclusion that if a band of freebooters should land upon the shores of Rhode Island as Hengist and Horsa and their followers landed in Britain fourteen centuries ago, and declare themselves to be in the majority and form a government, that, that would be the rightful government of the State. I think that that question has been decided in Rhode Island, and I have long indulged the hope that it had been permanently settled. It was decided adverse to the claim of Mr. Payne by every department of the State Government, and was incidentally passed upon in the Supreme Court of the United States, and I do not propose to reöpen that discussion.

Mr. John Whipple once said in reference to the organization of a new society, and what he said is applicable to the reorganization of a society or a state without reference to existing methods: "Suppose twelve men by some disaster to be thrown together upon an uninhabited island, would seven out of the twelve possess a natural right to establish a constitution of government for the whole? If the five should prefer to live by themselves, would they not possess the right

so to do? If the majority possess the right by nature to establish a constitution for the whole, they must necessarily possess the right to provide that the five should perform all the labor, and that the seven should enjoy the fruits of that labor. In such a case would not the five possess the natural right to resist? If the whole twelve should agree to be bound by such a constitution as a majority should establish, they would be bound by the force of their agreement alone."

Rousseau says that "the social compact can be formed only by *unanimous* consent, because the rule itself that a majority of votes shall prevail can only be established by agreement, that is by compact." The starting of a new government in its inception independent of existing organizations would break the continuity of existing systems and take away the foundations of protection to existing rights. The old government and all rights vested under it not protected by the Federal Constitution would be displaced, unless, indeed, they were protected by some special provisions of the new government.

The Iowa Court on page 609 of their Report of the case cited says: "It has been said that changes in the Constitution may be introduced in disregard of its provisions; that if the majority of the people desire a change, the majority must be respected, no matter how the change may be affected, and that the change, if revolution, is peaceful revolution. But the revolution is peaceful only upon the assumption that the party opposed surrenders its opposition and voluntarily acquiesces. If it objects to the change, then a question arises which can be determined in only one of two modes, by the arbitrament of the courts, or the arbitrament of the sword." Again on page 610. "Disguise the question as we will, theorize about it as we may, this is the fact with which we are at last brought face to face, and wisdom dictates that its dreadful possibilities should be apprehended and appreciated. We fear that the advocates of this new doctrine in a zeal

to accomplish an end which a majority of the people desire, have looked at but one phrase of the question and have not fully considered the terrible consequences which would almost certainly follow a recognition of the doctrines for which they contend."

"We ought to ponder long before we adopt a doctrine so fraught with danger to republican institutions. All the danger lies in the line of argument of the attorneys for the appellants. The courts can never overturn our institutions or subvert our liberties. They command neither the purse or the sword of state. But a people which is educated to disrespect their decisions and disregard the abjudications of the courts, is prepared for anarchy and all its attendant evils and dreadful consequences."

It is, however, claimed that there exists an immunity from the ordinary rules of construction of statute in the construing of constitutional provisions. This point has been somewhat considered in the courts. In the case of Webster vs. Cooper, 14 Howard, 504, the Supreme Court of the United States, Judge Curtis delivering the opinion of the Court, said: "We think there is no sound distinction between the construction of a law enacted by the legislature of a state, and the construction of the organic law, ordained by the people themselves."

Another rule of construction is that "in construing grants of power where no exception is made in terms, none will be made by implication or construction." See Rhode Island vs. Massachusetts, 12 Pet., 722, and the cases there cited. Both of these propositions thus appear to have been settled by the highest judicial tribunal in the country.

Now the grant of the general power to amend the Constitution of Rhode Island made by Article 13, contains no exception in that general grant. So it is difficult to see why the principles thus laid down do not cover the question under consideration.

Judge Story in laying down rules for construing constitutions says that a specification of particulars in an instrument is the exclusion of generals. The expression of one thing is the exclusion of another.

Bacon says exception strengthens the force of law in cases not excepted, so enumeration weakens it in cases not enumerated.

But it is enough to say that the Supreme Court of Rhode Island, applying the rules of construction laid down by the Supreme Court of the United States, to which I have adverted, have determined *in effect* that the mode of altering the Constitution is limited to the method prescribed in Article 13 of the Constitution, etc.

Taylor vs. Place, 4, R. I., 324.
Opinion of the Judges, 3, R. I., 300.
Opinion of the Judges, 14, R. I., 649.

The late ex-Chief Justice Job Durfee prepared, and no doubt delivered to the Grand Jury in charge, the construction of the Constitution which has been so fully accepted by the Supreme Court of the State.

The Judges of the Supreme Judicial Court of Massachusetts in a case far less strong under a constitution containing provisions exceptionably favorable to an opposite conclusion gave an opinion sustaining the views adopted by the Supreme Court of Rhode Island. See opinion of Judges, 6, Cush. Rep.

My adversaries meet these decisions and these opinions by saying that they are wrong and that the opinions are not binding decisions.

That the opinions of the Judges without parties before them are not legally obligatory on persons, Judge Bradley need not have gone to the Harvard Law School to get a professor to come to Rhode Island to tell the people, for it is just to them to suppose that they know that much. Nevertheless, the known opinion of the responsible Judges of the State will carry with it a moral force which will be the end of the argument of this question with a large proportion of the law-abiding citizens of the State.

Every man is liable to be mistaken, but it is not every man that has the perfect assurance of his own rectitude, to say with perfect confidence that another is mistaken; Judge Bradley has become exalted under the exhilarating influences of his estimate of his own opinions until he has reached a height from which he looks down upon the opinions of the judges with an air which is akin to contempt, but it will be observed, notwithstanding the position which he has assumed, that the very respectable authorities herein quoted sustain the opinions of the judges.

The granting of a power is like the granting of a house, the grantor has no right to resume possession of the power or thing granted but upon the breach of a condition of the grant.

The Legislature is an agent of the people, of the whole people (not of a mere majority), created under the Constitution, and its agency can be neither enlarged nor diminished, but in a manner provided in the Constitution. The people have not agreed to be bound by the action of the Legislature in a matter the power over which they have not delegated to the Legislature. The people in the Constitution have pointed out, and expressly directed the course to be pursued by the Legislature to secure an amendment to the Constitution, and the Legislature has no lawful authority to proceed in any other way. The minority have not agreed to be bound by a mere majority vote in amending the Constitution.

The authorities quoted in these papers would seem to strongly demonstrate that a concurrent power is not to be implied where there exists an express constitutional provision, yet the opponents of the views here expressed, contend that a power to call a constitutional convention is vested in the people and in the General Assembly by an implication derived from Article 1, section 1, and from section 10 of Article 4 of the Constitution.

These provisions are:

"The basis of our political systems is the right of the people to make and alter their constitutions of government; but that the constitution which at any time exists, till changed *by an explicit and authentic act of the whole people* is sacredly *obligatory upon all.*"

The answer to any inference sought to be drawn from this section adverse to the position herein assumed is cogent and at hand, for the people by Article 13 have provided and declared what should be considered *an authentic act of the whole people* for this purpose, and this Article excludes the presumption of any other act being an authentic act of the whole people for the purpose of effecting any alteration in the Constitution. Then the quotation from Washington's Farewell Address, from which this section is derived, is fully explained by the quotation from the same address which has been already inserted in these papers. Section 10, of Article 4, provides "That the General Assembly shall continue to exercise the powers they have heretofore exercised unless prohibited in this Constitution." Now, the power of the General Assembly in amending the Constitution is expressly granted in Article 13, and more, the extent and manner of exercising that power is therein expressly defined. By every canon of construction this takes away every ground for the support of any power existing by implication in the General Assembly to do anything in reference to amending the Constitution not embraced in Article 13.

The decisions made under the constitution of other states, in order to be of weight as authority in Rhode Island, must be shown to have been made under constitutions with provisions like those of Rhode Island, which cannot be done.

The convention which framed the Constitution of Rhode Island refused to adopt, and rejected a provision like the provision in the Constitution of Pennsylvania, because the convention apprehended that it would afford a ground for an implied grant of power of amend-

ments, such as the courts of Pennsylvania have derived from the provisions in that Constitution. So that the Pennsylvania cases have no weight as authority in Rhode Island, more than do the revolutionary proceeding under which the Constitution of Maryland was changed.

The Constitutional Convention was resorted to in South Carolina in 1832 to nullify the operation of the Federal Constitution in that State. The Constitutional Convention was resorted to in the seceding States in 1861, to take those States out of the Union, and as it is from these unauthorized bodies that the American system of government in the past has incurred its greatest dangers, so from this source we are to apprehend danger in the future.

Revolutions may be effected either with or without force. If a government is changed in a manner not authorized by law, the result is a revolution. It does not change the character of the act, because the change may have been effected without force. Curtis, in his History of the Constitution, says "the existence and operation of a prescribed method of changing particular features of the government mark the line between amendment and revolution."

The decisions and opinions I have quoted are not satisfactorily answered by saying that the judgments and opinions were wrong, or that the late Chief Justice Greene did not understand the Constitution, or that the late Chief Justice Durfee was no lawyer, a conclusion which neither the profession nor the people will accept without dissent.

I claim that the authorities I have quoted establish that the people can bind themselves by a constitution.

That the Constitution of Rhode Island contains no authority for its alteration beyond the express provision contained in Article 13 of that instrument.

The Constitution of Iowa contains the provisions often repeated in state constitutions asserting that "all political power is inherent in

the people and they have the right to alter or reform their government, etc., and also an express provision for calling a convention.

The Supreme Court of that State on page 614 of the report of the case before referred to, say of this provision: "But let us consider how these rights are to be exercised in an organized government. The people of this State have adopted a Constitution which specifically designates the modes for its own amendment, but this section declares the people have the right at all times to alter and reform the government whenever the public good may require it. If the people unanimously agree respecting an alteration in the government, there could be no trouble, for there would be no one to object. Suppose, however, a part of the people conclude that the public good requires an alteration or reformation in the government and they set about the adoption of a new constitution in a manner not authorized in the old one; suppose also, as would most likely prove the case, that a part of the people are content with the existing government and will not consent to the change and that the Governor, who under the Constitution is the commander-in-chief of the militia, determines to maintain the existing government by force. It is evident that the people who think that the public good requires a change, can establish these changes only by superior force." "They have the right to alter their government in a manner not recognized in the Constitution only when they can maintain the right by superior force. It follows then after all, that the much boasted right claimed under this action, is simply the right to alter the government in the manner prescribed in the existing Constitution or the right of revolution which is a right exercised not under the Constitution but in disregard of it," yet Chief Justice Bradley cites this case in support of his argument.

A contemporaneous construction has always been regarded with favor alike in the construction of deeds, statutes and of constitutions. Happily here we have such a construction. When the existing Con-

stitution was to take effect and the Legislature was to be organized under it, it was thought fitting that there should be an address which should review the old and the new Constitution. Professor William G. Goddard, Judge Bradley's first instructor in constitutional law, was selected to present this subject to the incoming General Assembly. No man was more competent for the task which was committed to him, for Professor Goddard had long been a careful observer of the conduct of the government of the State. Upon the question I am now considering he said, "the people of Rhode Island having determined to establish a constitution which, as far as practicable, should perpetuate the institutions transmitted to them by their fathers, have wisely guarded that constitution against the dangers of precipitate and disastrous innovation. They have placed no insurmountable obstructions in the way of such reforms as experience may indicate to be necessary. They have, however, rendered it difficult for any faction however cunning or however turbulent, to break down any of the essential conservative provisions of the Constitution. The danger of all precipitate action on the part of the Legislature is excluded, and no organic change can be consummated without the consent of a majority of three-fifths of the people, voting thereon in the primary assemblies—thus ensuring the consent of an actual majority of the whole people. These wise and salutary provisions will protect our State against fierce political controversies touching the very foundations of the government under which we live. Under free institutions the people must be expected to differ about men and measures of policy; but the whole social order is in danger, the securities of life, liberty and property, are in danger whenever it becomes the fashion of the day to project changes in the fundamental law, and to affect those changes by inflammatory appeals to the passions and interests of political parties."

My adversaries say that Article 13 of the Constitution which pro-

vides a mode in which the Constitution may be amended is directory, that it is therefore not exclusive of other modes, and that the question as to the validity of an amendment is a political question to be determined by the Legislature, while my construction is, that the amendment clause in the Constitution is mandatory, and if mandatory it is necessarily exclusive, and that the validity of any amendment of this Constitution may be passed upon by the judiciary. The very learned Court of Iowa in the case already quoted on page 555 of the Report, say: "If, therefore, a constitutional provision is to be enforced at all, it must be treated as mandatory, and if the Legislature habitually disregard it, it seems to us that there is all the more urgent necessity that the courts should enforce it; and it also seems to us that there are few evils which can be inflicted by a strict adherence to the law, so great as that which is done by the habitual disregard by any department of the government of a plain requirement of the instrument from which it derives its authority, and which, therefore, ought to be scrupulously observed and obeyed. We deem it sufficient to say that if there is any provision of the Constitution which ought to be regarded as mandatory, it is the provision for its own amendment." On page 604 of the Reports the Court say: It is asserted that the judicial department has no jurisdiction to determine if the amendment of the Constitution was properly adopted. "This position practically amounts to this, that the provisions of the Constitution for its own amendment are simply directory, and may be disregarded with impunity for it is idle to say that these requirements of the Constitution must be observed, if the departments charged with their observances are the sole judges as to whether or not they have been complied with."

In Europe the organic law of civil society can be changed only by revolution. In the United States the organic law of a state can be changed in the manner provided in the organic compact or by revolu-

tion. When a change in government is wrought in violation of existing forms, it is no less a revolution if effected peaceably than if the result was attained by force. Mr. Payne's newly discovered American doctrine, that the majority has the right to govern the people of a state without limit other than that prescribed by the Federal Constitution, I apprehend can find but little support in reason or authority. For the majority has no authority over the minority but what is derived from the organic law. According to the idea of Mr. Payne, the people of to-day may determine what shall be their organic law, and the people of to-morrow, without reference to the compact of to-day, may abrogate that compact and all rights vested under it and reorganize society under a new organic law to-morrow. If this is the correct idea of the basis of the governments of the American states, all of their constitutions are but a myth, and vested rights are held by the uncertain tenure of the pleasure of a capricious majority.

If the people cannot bind themselves as to the method of altering their Constitution they cannot bind themselves in reference to anything in government. I regard the doctrine inculcated by Mr. Payne, in view of the rising tide of agrarian force that is already gathering strength and threatening to severely try the power of the law to preserve public order, to be exceedingly dangerous to the public peace. Let the idea obtain a considerable foothold that the Constitution has no other basis for its stability than the pleasure or the passion of a self-constituted and a self-ascertained majority in the State, prudent men will shrink with horror from the logical result of such doctrine.

The argument of Judge Bradley is more specious than is that of Mr. Payne, and if the report of his remarks before the Judiciary Committee can be relied on, his recent construction is a limitation upon the claim he has hitherto presented. He starts out by saying, "A very important question has come up within ten years, that is, the right of the General Assembly to submit the matter of amending

the Constitution to the people. The question came up in the House of Representatives of the United States in regard to the Arkansas Constitution, etc."

Judge Bradley, no doubt intended to say, if he did not say, that the matter which had arisen was in reference to the power of the General Assembly to call a convention to change the Constitution.

From these introductory remarks it is quite apparent that in the opinion of this gentleman a new construction has been evolved out of the Constitution within ten years. Is not this carrying the doctrine of evolution a little too far?

Judge Cooley appears to differ with the learned ex-Chief Justice in this, as he does upon some other matters in reference to the subject matter of this discussion. Judge Cooley says "a written constitution comes into existence with the understanding and purpose that its several paragraphs and provisions shall mean forever exactly what they mean when adopted, and if a change is to take place in the constitution it must be brought about by the steps which in the instrument itself are provided for."

Judge Cooley thus gives the weight of his great authority against the application of the doctrine of evolution in the construction of constitutions, and I am content to leave this proposition about the new construction evolved within ten years upon this authority alone.

Judge Bradley was no more fortunate in obtaining support for his peculiar views of constitutional law in his reference to the Arkansas case, than in his application of his new construction. According to my recollection of the Arkansas case, a resolution was offered in the Federal House of Representatives to appoint a committee to inquire if the State of Arkansas had a republican form of government. A majority of the committee reported that, that government was in form republican—and the House decided that this was the limit of the authority of Congress over its government. That all power over the

Constitution and government of the State was with the State so long as the government was republican in form, and that decision appears to be well founded in the principles of our government; but, however, since Judge Bradley has held up this case as a rule to govern the authorities of Rhode Island, and has commended it as an example to be respected, it may not be amiss to look into the case a little. The committee who had the subject of the inquiry in charge, made an examination into the facts connected with the formation of the Arkansas Constitution, and the character of the government of that State. The results of these findings are thus stated by Mr. Tremain, a representative from New York, who said: "Wrongs of the most atrocious character have been perpetrated in the State of Arkansas which have resulted in setting up the paper called the Constitution of that State and in the election of Garland, said to be Governor of Arkansas. Those wrongs were marked by bribery, corruption, intimidation and force, by a reign of terror, and by trampling under foot all the provisions of the Constitution and laws of the State that were intended to secure to the electors of that State the enjoyment of the elective franchise, the most valuable privilege of American citizens. If the facts upon which I base this statement were not fully authenticated by the reports which lie on our table, it would not be credited that in any civilized community in the nineteenth century, and among a people that acknowledge, or claim to acknowledge, the restraints of constitutions and laws, such a deplorable state of public affairs could have existed as has been exhibited in that unfortunate and unhappy State during the last two or three years. The simple question presented to the House is whether these wrongs which have culminated in the present Constitution and in establishing Garland as Governor of the State, are wrongs without a remedy?"

As a part of the scheme to change the government of Arkansas, articles of impeachment were presented against the judges, and an

act of the Assembly was passed disqualifying them to act pending the impeachment. New judges were appointed, and the Assembly took from them all power to adjudicate election cases or interfere with the pending revolution.

The Legislature comprised twenty-six senators and eighty-two representatives. At the special called session for calling a constitutional convention, only nine senators and twenty-four representatives were found willing to attend to participate in the revolutionary scheme. The Governor was quite equal to the emergency; he declared the seats of the absentees vacated, and ordered new elections, and appointed the place of proceeding therein, and thus he secured the presence of a legislature. In carrying out this scheme from beginning to end, there were committed 1,060 murders or attempts at murder. Judge Bradley could not have known the facts in this case or he would not have held up the example of adopting a constitution in Arkansas for imitation by the people of Rhode Island.

Recurring to the arguments of the gentlemen I have named, who claim either the power inherent in the General Assembly or in the people to call a constitutional convention without reference to the express provision for the amendment of the existing Constitution, I invoke the aid of a few more authorities. Henry Clay, while speaking of the state of affairs in Rhode Island in 1842, said: "How is this right of the people to abolish an existing government and to set up a new one to be practically exercised? Who are the *people* that are to tear up the whole fabric of human society whenever and as often as caprice or passion may prompt them? When all the arrangements and ordinances of existing and organized society are prostrated and subverted, as must be supposed in such a lawless and irregular movement as that in Rhode Island, the established privileges and distinctions between the sexes, between the ages, between natives and foreigners, between the sane and the insane, and between the

innocent and the guilty convict, all the offspring of positive institutions are cast down and abolished and society is thrown into one heterogeneous and unregulated mass. And it is contended that the major part of this babel congregation is invested with the right to build up, at its pleasure, a new government. That as often and wherever society can be drummed up and thrown into such a shapeless mass, the major part of it may establish another, and another new government, in endless succession. Why, this would overturn all social organizations, make revolution—the extreme and last resort of an oppressed people—the commonest occurrence of human life, and the standing order of the day. How such a principle would operate in a certain section of the Union with a particular population, you will readily perceive."

Mr. Madison, in the Federalist, No. 43, asks: "Why may not illicit combinations, for purposes of violence, be formed as well by the majority of a state, especially a small state, as by a majority of a country, or a district of the same state? And if the authority of the state in the latter case cannot protect the local magistrate, ought not the Federal authority to support the State authority?" He further says that in defining the meaning of "a faction" it is "a majority or minority of the whole who are united and actuated by some common impulse of passion or interest adverse to the rights of other citizens or to the permanent and aggregate interest of the community."

Again the same authority says: "In a society under the forms of which the stronger factions unite and oppress the weaker, anarchy may as truly be said to exist, as in a state of nature where the weaker individual is not secured against the violence of the stronger. (See Federalist No. 51.)

John C. Calhoun, writing to Mr. William H. Smith, an officer under the Dorr Constitution says: "It is in this state (civil society) and this alone that majorities and minorities are known, or as such have

any rights. Whatever rights they possess are political rights, the whole class of which are acquired and are called conventional; that is, rights derived from agreement or compact. How absurd, then, is it to suppose the right of a majority to alter or abolish the Constitution is a natural right. * * * * * The right of altering or changing a constitution is a conventional right belonging to the body politic and subject to be regulated by it."

In Rhode Island the matter of amending or changing the Constitution has already been the subject of a convention called by the people and the terms of such change or amendment have been settled in the organic compact, and to change it in any other way would be a usurpation.

Recurring again to the method of construction of a constitutional provision, I will recall attention to the rule laid down in the Court of Appeals of the State of New York.

In the case State vs. Draper, 15 N. Y., 544, it is said: "The frame of the government, the grant of legislative power itself; the organization of executive authority, the creation of the principal court of justice creates implied limitations upon the law making authority as strong as though a negative was expressed in each instance."

Again on page 549, it is said by Mr. Justice Shankland, "that the limitations of the Constitution are not so much limitations of the Legislature as of the power of the people themselves, self imposed by the constitutional compact."

Page 559, Brown J., says: "When that instrument prescribes a mode of exercising a function of government such as making laws, administering justice or selecting officers, the Legislature are prohibited from prescribing a different mode." See also Broom's Maxims, 414 (4th ed.), and the matter of Albany St., 11 Wendell, 151.

If the New York Court of Appeals are correct in their law why should not an affirmative provision in a constitution of a state point-

ing out a way for amending the constitution contain an implied negative and exclude all other modes of amendment?

Rev. Dr. Francis Wayland said: "If an established government may be overturned on the principles which have been advocated, and in the manner which we have seen attempted, no constitution in the land is worth the parchment on which it is written. The only law that would be known would soon be the law of force. The only principle of action would come to be the love of plunder. All that would be necessary, in order to establish unlimited power over us, would be without the forms of law, to lay claim to a majority, and assemble a sufficient number of armed men to carry its decision into effect. The same means by which the first usurpation was accomplished would be a good reason for perpetrating a second and a third, each one more bloody and tyrannical than its predecessor, until the horrors of revolutionary France were reënacted here, until they terminated in as fearful and inflexible despotism."

John Whipple, speaking of the power of the people of a state to alter their constitution, said: "That while there is no doubt that these powers are in the people, it is quite clear that by the universal voice of every American constitution, general as well as state, there are certain modes of exercising this power prescribed by the people themselves, from which they cannot depart without annihilating all government of law and establishing a government of brute force."

"The whole people of this country possess no greater power, except through their representatives, to make law than a single individual.

It is a government of law, not a government of numerical force.

The people possess no judicial powers. They possess no legislative powers. Their power of electing representatives is supreme. * * * The peculiar excellence of our system over all others is that under the law the poor man and the weak man secure the same protection that the rich man and the strong man receives."

Chancellor Kent says: "The Constitution is the act of the people speaking in their original character and defining the *permanent conditions* of the social alliance."

M. de Tockville says he is of the opinion that "if the free institutions of America are to be destroyed it will be owing to the tyranny of majorities driving minorities to desperation. The majority constitutes public opinion, which becomes a tyrant and controls freedom of discussion and independence of mind. * * * If there was no check upon the tyranny of legislative majorities, the prospect before us would be gloomy in the extreme."

This author holds out a hope for the stability of the American governments from the fact that "there are fundamental rights declared in the constitutions, and there are constitutional checks upon the arbitrary will of majorities confided to the integrity and independence of the judicial department." But if the barrier erected in the Constitution for the protection of these fundamental rights is to be blown down by every impulse of the popular breath, then there can be no permanent condition of the social alliance, and no permanent protection for fundamental rights of persons or property.

The proposed change in the Constitution would let in to vote, a class of people who are now either unwilling or unable to so restrain their action as not to inflict injury upon others, and to whom the restraints of law are insufficient to keep from injuring the persons and property of others; men who in the exercise of an undoubted right to refuse to be employed, in violation of the rights of others refuse to permit others to be employed. Men who in secret, band themselves together by secret obligations to defeat the collected will of society as expressed in the law, are thus sought to be given the power of making the law.

The great mass of the men who would be permitted to vote under the extended suffrage would be the lawless class of those who

were alien born—the very men who are seeking to drive from the country the Hungarians, the Poles, the Italians and the Chinese, a class whose devotion to country, Washington doubted and Jefferson thought ought not to be trusted.

In Rhode Island, as elsewhere, there is a class of men aptly described by Butler in his Analogy as "certain speculative world tinkers, engaged in that idle and not very useful employment of forming imaginary models of the world and schemes for its government." Closely allied to Bishop Butler's "world tinkers" is a class of men who want to tear down everything in existence and recast things after their own models; these men do good sometimes, but upon the whole they do much more harm than good. When we take into the account the present condition of the industrial affairs of the country and the popular agitation going on in connection therewith, and the danger in adding a new element of discord to intensify the impending excitements, every good citizen, without yielding any principle of right government, will seek to allay the impending disturbances and to reconcile the discontented to the existing order of things. The intentions of the men who framed, and of the men who adopted, the existing Constitution of Rhode Island, as to the method of amending it, cannot but be well known to Judge Bradley and to Mr. Payne. To the axioms of the law applicable to the construction of that Constitution they are not strangers. Among the latter, "the intent of the framers and of those who adopted the Constitution is to be carried into effect if it can be without doing violence to the language of the instrument." There is no other state constitution the general clauses and the provision in reference to its amendment, like the Constitution of Rhode Island, so but little light can be obtained from the action of the tribunals of other states upon provisions of constitutions differing from those of this State. All of these matter but little, for if Rhode Island is in the right in the provisions

of its Constitution in reference to the elective franchise and the method of amendment, and as I confidently assert it to be, I care little who may be on the other side, for being in the right, though alone, it is in the majority.

IV.

OBJECTIONS TO THE EXISTING CONSTITUTION CONSIDERED.

The qualification of electors appears to be the objective point of those who advocate the overthrow of the Constitution by the revolutionary means I have indicated. Their specific objections are to the distinction made between native and naturalized citizens, to the property qualification required of electors who vote upon questions of taxation or involving the expenditure of money and to the registry tax.

Jefferson's notes had been written, and Mr. Van Buren had made his speech in the Convention of New York, in 1821, before the meeting of the Convention to frame the Constitution for Rhode Island, in 1842. Jefferson said of the dangers to our institutions to be apprehended from emigrants, "Nothing can be more opposed to them than the maxims of absolute monarchies. Yet from such we are to expect the greatest number of emigrants. They will bring with them the principles of the governments they have imbibed in their early youth, or if able to throw them off, it will be in exchange for an unbounded licentiousness, passing, as is usual, from one extreme to another. It would be a miracle were they to stop precisely at the point of temperate liberty. These principles, with their language, they will transmit to their children. In proportion to their numbers they will share with us the legislation. They will infuse into it their spirit, warp and bias its directions, and render it a heterogeneous, incoherent, distracted mass. I may appeal to experience," etc., etc.

Mr. Van Buren, in considering the question of the qualification of electors in New York, said: "It would give to the city of New York about twenty-five thousand votes, while under the liberal extension of the right on the choice of delegates to this Convention she had but about thirteen thousand. That the character of the increased number

of voters would be such as would render their elections rather a curse than a blessing; which would drive from the polls all sober-minded people; and such, I am happy to find, is the united opinion, or nearly so, of the delegation from that city."

The words of Jefferson and Van Buren were prophetic, and have been more than verified by the experiences of the country since they were uttered. In view of the teachings of these oracles of democracy, I was not surprised to see in the report of the speech of Senator Beck of Kentucky, on the admission of Dakota, that he objected to the admission on account of the large proportion of the population of the Territory that were alien born.

The alien born can have but half a home in the land of their adoption; they still look back to the land of their birth, the scenes of their childhood and the graves of their ancestors as being their homes. The framers of our State Constitution thought that it was proper to require from this class of our fellow citizens some evidence that they intended to abide with, and to make a home amongst us. The holding of real estate was not regarded as a qualification, but as evidence of good citizenship; of industry, economy, and a disposition to abide in the State. Every good citizen in any state will encourage every man to obtain a home for himself and those who may be dependent upon him. If every laborer in the State had a home, that home would constitute a bond of security for him to keep the public peace, and he would not incline to engage in tumult or disorder; and this real estate requirement to permit a naturalized citizen to vote operates as a stimulus to this class of our fellow citizens to secure homes for themselves and families, and the same stimulus is held out and is operative as an inducement to native citizens to entitle them to vote upon questions of taxation.

These provisions of the Constitution attracted the attention and received the approval of the late Chancellor Kent, who said in speak-

ing of them: "Naturalized citizens are required to have a freehold estate of the value of $134; and no person can vote to impose a tax or to expend money in any town or city, unless he shall have paid a tax within the year preceding, upon property valued at least at $134. These provisions with that relating to the judicial tenure and compensation, render the aspect of the Constitution of that State more wise and conservative than any other constitution recently formed or amended. Indeed that Constitution seems to stand preëminent in value over any of the existing state constitutions in the guards it introduces against one of the most alarming evils incident in large towns and cities to our democratical establishment."

Under any standard of qualification for voters some hard cases will arise. Many men are allowed to vote under the existing standard, who ought not to be allowed to vote, and some are excluded who profitably to the State might be allowed to vote. It is quite certain that as much injustice would be done to the public by any enlarged standard of qualification as is done under the existing Constitution.

The argument that men ought to be allowed to vote, taxes no part of which they are to pay, is born of a desire in one man to appropriate to his own use the property of another. The struggle now going on in New York and Boston to take the control of the property from their voters, argues in favor of this provision in the Constitution restricting the power to vote taxes more strongly than anything I can say upon that subject.

The men who seek to make the most disturbance in the State are ordinarily those who contribute the least to its welfare and have the least interest in the State, not the men who are striving against unjust burdens, but those who are struggling to get something from the public without giving an equivalent therefor, as it is generally true that men who most desire office, are those who are most wanting in the capacity or disposition to properly discharge its duties.

There are thousands of persons in Rhode Island, who are entitled to vote upon paying a registry tax of one dollar each who do not take interest enough in public affairs to pay their registry taxes, or value the privilege of voting enough to pay a dollar a year to be applied in the education of the children of the town in which they reside. It is quite possible to approximate the cash value to these men of the privilege of voting. It is certainly worth to them less than a dollar per year.

There is a point which, when attained in the exercise of the elective franchise, that every extension of the privilege brings in a less desirable class of voters, and may require a rearranging of the representative forces in the government to keep it in proper balance. But unhappily each extension of the elective franchise makes it more difficult to attain this end; usurpation and revolutions may be accomplished under color of law as well as by force and against law. Therefore, the legislative power in the government should be deposited in the hands where its obligations and responsibilities would be best appreciated and be most correctly carried out regardless of other considerations, and if the present system of representation has done no wrong to any municipality, why change it?

Among our foreign born people are excellent characters, especially among that class generally known as skilled laborers, who would make desirable voters, but the misfortune is that the rule that would admit such of them to the elective franchise as are now excluded, would also admit a mass of other persons who would completely overwhelm them, and who would be in a situation to inflict serious injury to the State, and this class of our fellow citizens are concentred in densely populated places, and would be likely to be represented in the General Assembly by men who would reflect the opinions of the dominating element of these foreign nationalities which might not be beneficial to the State, and the deadheads who take a free pass

through the world and the soldiers of fortune who are ready to attach themselves to any party in the State which promises them advancement will always reinforce the ranks of any class to attain their objects without regard to the consequences to the State.

The times are not propitious for straining and disturbing the fundamental laws of society. It is a time to allay disturbances, to heal differences by pacific conduct rather than to open new causes for contention. The rights of persons and property abroad and even in parts of our own country are being seriously threatened, and the laws have not been strong enough in all cases to secure that protection for them which the Constitution guarantees. I cannot, therefore, regard the present time as being propitious for law-abiding citizens to seek to upturn the settled foundations of the social fabric of the State.

If the persons who engage in agitating these questions which tend to disturb society have a real, earnest desire to benefit the classes of people who cannot vote, let them address themselves to closing up grog shops and other places of vice, and to impressing upon the disfranchised the important lessons of temperance, industry, and a prudent economy in the administration of their resources, a course in which the philanthropy of their mission will not be opened to the suspicion of sinister motives, and the usefulness of their labors will not be questioned. Let them seek thus to level up the disfranchised to the present standard of the law, rather than to degrade that standard below its present level.

But, after all, if a man has not the capacity to attain one of the qualifications to vote prescribed in the Constitution, or having the capacity is wanting in interest in public affairs to qualify himself to vote, is the loss of the vote of such a person to be regarded as a public calamity? or is it a grievance which calls for a change of the fundamental law of the State to redress? An isolated case of hardship is not enough to call for a change in the Constitution. Human institutions are, and from their nature must be, imperfect.

Nowhere in the world are the industrial classes better housed, better fed, better clothed, or are they more intelligent, or more free from controversies with employers than in Rhode Island, and nowhere are these classes more respected or are they more self respecting, and in no small measure their favorable condition is attributable to the qualifications here fixed for voters. The desire to vote and to participate in the government is a stimulant to the heads of families to obtain homes, and when they have a dwelling which they can call their own, they feel and have a good degree of independence, and when they pay a part of the expenses of the government however small that part may be, they will have an interest in the government which they would not otherwise possess.

Now in reference to the registry tax, it does not appear to be a great hardship to exclude from the privilege of voting the man who has not ability enough to enable him to pay or who is unwilling to pay a tax of one dollar towards the expense of sustaining the public schools of the State. It is said that this tax is often paid by candidates for office to get the votes of the persons whose tax is paid. But is it entirely certain that such a payment would qualify anyone to vote? If not, the fault would lie in the administration of this provision of the Constitution, and not in the Constitution. Ought any one to vote for officers whose salaries he does not contribute to pay, or who does not contribute in any way to the support of the government? There are a great many deadheads on the public train who pass through life without paying their way, and I do not care to have them made directors in the great public corporation.

Professor Goddard, in the admirable and philosophic address from which I have already quoted, said in reference to the restrictions upon the elective franchise contained in the Constitution: "Liberal enough it may not be, to suit the notions of those who contend that every man in Rhode Island twenty-one years of age, has a natural

right to vote. Liberal enough it may not be, to facilitate the plans of demagogues who seek, by inflaming the passions of concentrated masses, to hold in their own hands the whole political power of the State. No man among us, however, who considers the extent of our territory, the peculiar character of our population, the concentration in four or five towns of more than the half of the whole number of our inhabitants, the relative decline of population in the agricultural, and its rapid increase in the manufacturing districts can, with any just reason, utter a complaint, because the new Constitution has not left the right of suffrage entirely unrestricted. In states of larger territorial extent where the agricultural interest is the predominant interest, universal suffrage may encounter some practical and efficient checks upon its otherwise inevitable tendencies to work mischief. In Rhode Island, however, such salutary checks are not and never can be found. A wholly unrestricted suffrage would, therefore, be pregnant with incalcuable evils to the State. It would jeopard the rights of property and the principles of liberty. If all history be not a lie, (quoting from Chancellor Kent, the Professor says) "there is a tendency in the poor to covet and to share the plunder of the rich; in the debtor, to relax or avoid the obligations of contracts; in the majority to tyrannize over the minority, and trample down their rights; in the indolent and profligate to cast the whole burden of society upon the industrious; and there is a tendency in ambitious and wicked men to inflame these combustible materials." "If, my fellow citizens you desire to know how alarming are the mischiefs which universal suffrage entails upon a community, look at the great City of New York."

Complaint has been sometimes made of the inequality in the representation of the populations of the towns and cities in the General Assembly. The question which arises in distributing power in government is, where will be its safest repository? The seclusion of a

rural population is more favorable for reflection, study, and the formation of correct opinions of men and things than is the situation of the inhabitants of thickly settled localities. The latter have many things to attract their attention which are absent from the rural districts. From Jefferson down to the present time political writers have regarded rural populations as being a safer repository for political power than urban populations. The greater facility for meeting together and organizing for political action in the cities than in the country gives to a number of persons in the cities a much greater power than can be exerted by an equal number in the country. Then the greater wealth accumulated in the cities, much of which is employed in the country, exerts its power and influence in shaping the political action of the localities where its influence prevails. For instance, the employés in industrial establishments located in the several towns of the State and owned and directed by men residing in the City of Providence, hold the balance of power between the political parties in many of the towns and are able to direct the public affairs of the town.

No one in his senses will deny that it would be a very great evil to have the entire State dominated by a single large municipal corporation. The rights and interests of the dominant party in that city would control the rest of the State; which would hold its rights and interest in all cases subordinate to the will of the dominant party in the city, and the minority in the dominating city would be subjected to the control of the same power, which might impose burdens upon the inhabitants of the rural districts and the minority in that city, which would be unjust. Justice is the great end for which government is instituted. To attain this end checks and balances have been introduced.

Supposing intelligence and ignorance to exist in the same proportions among the population of the cities and of the country. In the country it would be impracticable to organize the ignorant for any

unlawful or improper purpose, for the reason that they are too widely separated from each other to enable them to organize to effect any such purpose, while it is otherwise where there is a dense population. The ignorant are not necessarily vicious. It has been said that ignorance is the softest pillow upon which a man can rest his head, but it is the most insecure, for he who knows no danger apprehends none. Yet the ignorant have passions to be moved, but are without reason to restrain or guide them. They can, therefore, be easily induced to join in measures prejudicial to the State.

Speaking of the Senate as constituted under the Constitution of Rhode Island, Professor Goddard said: "Were the senators and representatives who compose the Legislature elected upon the same basis of population, the legislative department would be without check or balance, The government however popular might be its form, would in effect be a despotism. The whole legislative power would be exercised by the representatives of mere numbers. What check would there be upon factious majorities who are actuated by some common impulse of passion or of interest adverse to the right of other citizens or to the permanent and aggregate interest of the whole? We have reason to be grateful that our Senate is just such a Senate as Rhode Island needs."

Again, numbers is not the only standard for ascertaining the equality of representation in a legislative body. One man of intelligence and capacity for legislation can exert more influence in legislation than ten men who are not qualified to do the duties of the legislative office. Talent following the law of demand and supply, centres in thickly settled places, so such places can select men better qualified to perform legislative duties than are obtainable from the country. Under the present organization of the Legislature no one has ever heard any just ground of complaint that the City of Providence was in any way unjustly dealt with, or that the people of Providence have not had due protection from the laws of the State,

and after all justice is the end of government rather than equal representation. Riots and tumults do not originate among the rural populations, but these are the outcome of organized bodies of passionate and ignorant men, and are possible only in densely peopled neighborhoods, where the influence of the grog shop is more effective than that of the minister of the gospel and the school of learning.

In conclusion I may say that "Order is heaven's first law." The planetary system and all the operations of the universe observe their order. Human society rests upon the foundations, and is permeated by the principles of order and is dependent upon it for its utility, its symmetry, and its strength. True, the laws of nature sometimes adjust their operations by convulsions, and by revolution, society sometimes modifies the terms of its organization to adjust itself to altered conditions, this experiment was tried in France and in America, but with very different results. The American people admonished by the experiences of other nations have guarded against the evils of revolution by providing for a peaceable and orderly mode of modifying the frame-works of their governments whenever the exigencies of the state requires such modifications, and thereby have provided a way of escape from social disruption and its attendant consequences.

I have shown that Abraham Lincoln has declared a constitution of government to be a perpetual obligation; that Washington admonished the people not to attempt to change the government by usurpation, but if amendments are needed to the Constitution to make them in the mode prescribed by the Constitution. Madison has said that a greater proportion of the people may be required than a mere majority to bind a minority, if under any circumstances it should be deemed eligible. That Curtis in his history of the Constitution has said: "The existence and operation of a prescribed method of changing particular features of the government mark the line between amendment and revolution. That Judge Cooley in a very recent publica

tion has said, if a change is to take place in the Constitution, it must be brought about by the steps which in the instrument itself are provided for. That Webster has said that the people limit themselves by their Constitution. That Chancellor Kent pronounced the Constitution of Rhode Island to be the best of modern state constitutions. That the judges of the highest judicial tribunals of Rhode Island, Massachusetts and Iowa have expressed opinions in accord with these authorities, and the Chief Justice of Rhode Island in a separate monograph has contributed an argument of extraordinary force in support of the view which I have endeavored to present in this discussion. Principles governing the construction of constitutions taken from the decisions of the highest judicial tribunal in the country, and from the most eminent legal writers have been adduced to show that the express provision for the amendment contained in the Constitution is exclusive of all others but by revolution. Then I have endeavored to show that under the existing Constitution there exists no grievances which call for any amending of the Constitution. That under existing circumstances the agitation of changes in the fundamental law is calculated to disturb the foundations of society, to weaken the respect for law in certain classes of the people ; to divert their attention from useful vocations and to involve the people in useless dissentions, and in conclusion I will again commend to the disfranchised under existing laws and to those who are disposed to introduce into the State at a time when the relations between labor and capital are strainedto their utmost tension this new element of discord, to unite every good citizen of the State in elevating every disfranchised person to the required standard of qualification for a voter, rather than to degrade the standard below its present requirement. In the meantime I shall follow with fearless tread where Washington, Lincoln, Madison, Webster, Cooley, Curtis and the judges of the Supreme Courts of Rhode Island and of other states and Chancellor Kent lead the way, even if I walk alone.